

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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iRACING.COM MOTORSPORT SIMULATIONS,  
LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIM ROBINSON, individually and d/b/a  
www.ow-racing.com, www.torn8oalley.com and  
www.First-Racing-Sucks.com

Defendant.

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X

Civil Action No.  
05-11639 NG

AFFIDAVIT OF  
STEVE MYERS IN  
OPPOSITION TO  
MOTION TO DISMISS

X

I, Steve Myers, upon oath depose and say as follows:

1. I am employed by iRacing.com Motorsport Simulations, LLC ("iRacing") as Vice President of Operations and Production. iRacing is a Delaware Limited Liability Company headquartered in Bedford, Massachusetts. iRacing has no offices in California.

2. The NASCAR® 2003 Racing Season ("NASCAR® 2003") software was developed by iRacing's predecessor-in-interest, Papyrus Design Group, Inc. ("Papyrus"), and released by Papyrus and its parent company, Sierra On-Line, Inc. ("Sierra"), in February 2003. As I understand it, at the time, Sierra was a wholly owned subsidiary of Vivendi Universal Games ("VUG"), which is based in Los Angeles, California.

3. When NASCAR® 2003 is first installed on a computer, it presents an End User License Agreement ("EULA") and asks the user to accept or reject its terms by clicking a button on the computer screen. A copy of the EULA is

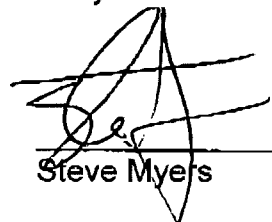
attached as Exhibit A. Upon the EULA's acceptance, the NASCAR® 2003 software completes installation. Since VUG is based in Los Angeles, the EULA contains a forum selection clause requiring any end user to bring suit in Los Angeles courts.

4. iRacing purchased the rights to NASCAR® 2003 from VUG on or around May 28th 2004. VUG also assigned iRacing rights to enforce the EULA.

5. On December 23, 2004, Robinson, as "Owner, OW-Racing.com," agreed to test the beta version of new software that iRacing was developing but had not yet released. As part of that agreement, Robinson signed a Confidential Disclosure Agreement ("CDA") in which he agreed not to disclose "valuable and confidential information" relating to the beta software. A copy of the CDA is attached as Exhibit B. The CDA lists iRacing's address as Bedford, Massachusetts.

6. Between the time Robinson first posted links to the offending files and when iRacing filed this action, Robinson has on numerous occasions communicated with iRacing by email (in response to emails with Massachusetts signature lines) and telephone in which he used Massachusetts area codes. Copies of relevant emails are attached collectively as Exhibit C.

SUSCRIBED AND SWORN TO on this 7th day of February 2006.

  
Steve Myers

Certificate of Service

I, Irwin B. Schwartz, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that on this 7th day of February 2006, I filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: Joseph F. Ryan, Lyne Woodworth & Evarts LLP, 600 Atlantic Avenue, Boston, MA 02210, counsel for Defendant Tim Robinson.

/S/ Irwin Schwartz  
Irwin B. Schwartz

# EXHIBIT A

## EULA.txt

YOU SHOULD CAREFULLY READ THE FOLLOWING END USER LICENSE AGREEMENT BEFORE INSTALLING THIS SOFTWARE PROGRAM. BY INSTALLING OR OTHERWISE USING THE SOFTWARE PROGRAM, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE UNUSED SOFTWARE PROGRAM TO THE PLACE OF PURCHASE OR CONTACT SIERRA ENTERTAINMENT, INC. CUSTOMER SERVICE AT (310) 649-8008 FOR A FULL REFUND OF THE PURCHASE PRICE WITHIN 30 DAYS OF THE ORIGINAL PURCHASE.

This software program (the "Program"), any printed materials, any on-line or electronic documentation, and any and all copies and derivative works of such software program (including materials created with a so called level editor, if included) and materials are the copyrighted work of Sierra Entertainment, Inc., a division of Vivendi Universal Games, Inc. and/or its wholly owned subsidiaries, or its suppliers. All rights reserved, except as expressly stated herein. All use of the Program is governed by the terms of this End User License Agreement provided below ("License Agreement"). The Program is solely for use by end users according to the terms of the License Agreement. Any use, reproduction or redistribution of the Program not in accordance with the terms of the License Agreement is expressly prohibited.

## END USER LICENSE AGREEMENT

1. Limited Use License. Sierra Entertainment, Inc. ("Sierra") hereby grants, and by installing the Program you thereby accept, a limited, non-exclusive license and right to install and use one (1) copy of the Program for your use on either a home, business or portable computer. In addition, the Program has a multi-player capability that allows users to utilize the Program over the Internet via Sierra's online game network Sierra.com. Use of the Program over Sierra.com is subject to your acceptance of Sierra.com's Terms of Use Agreement. Sierra Entertainment, Inc. reserves the right to update, modify or change the Sierra.com Terms of Use Agreement at any time. The Program is licensed, not sold. Your license confers no title or ownership in the Program.

2. Ownership. All title, ownership rights and intellectual property rights in and to the Program and any and all copies thereof (including but not limited to any titles, computer code, themes, objects, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, any related documentation, and "applets" incorporated into the Program) are owned by Sierra Entertainment, Inc. or its licensors. The Program is protected by the copyright laws of the United States, international copyright treaties and conventions and other laws. All rights are reserved. The Program contains certain licensed materials and Sierra's licensors may protect their rights in the event of any violation of this Agreement.

## 3. Responsibilities of End User.

A. Subject to the Grant of License hereinabove, you may not, in whole or in part, copy, photocopy, reproduce, translate, reverse engineer, derive source code, modify, disassemble, decompile, create derivative works based on the Program, or remove any proprietary notices or labels on the Program without the prior consent, in writing, of Sierra.

B. The Program is licensed to you as a single product. Its component parts may not be separated for use on more than one computer.

C. You are entitled to use the Program for your own use, but you are not entitled to:

(i) sell, grant a security interest in or transfer reproductions of the Program to other parties in any way, nor to rent, lease or license the Program to others without the prior written consent of Sierra.

(ii) exploit the Program or any of its parts for any commercial purpose including, but not limited to, use at a cyber café, computer gaming center or any other location-based site. Sierra may offer a separate Site License Agreement to permit you to make the Program available for commercial use; contact Sierra for details;

(iii) host or provide matchmaking services for the Program or emulate or redirect the communication protocols used by Sierra in the network feature of the Program, through protocol emulation, tunneling, modifying or adding components to the

## EULA.txt

Program, use of a utility program or any other techniques now known or hereafter developed, for any purpose including, but not limited to network play over the Internet, network play utilizing commercial or non-commercial gaming networks or as part of content aggregation networks without the prior written consent of Sierra ; (iv) create or maintain, under any circumstance, more than one simultaneous connection to Sierra.com. All such connections to Sierra.com, whether created by the Program or by other tools and utilities, may only be made through methods and means expressly approved by Sierra Entertainment, Inc. Under no circumstances may you connect, or create tools that allow you to connect to Sierra.com's private binary interface or interfaces other than those explicitly provided by Sierra Entertainment, Inc. for public use.

4. Program Transfer. You may permanently transfer all of your rights under this License Agreement, provided the recipient agrees to the terms of this License Agreement and you agree to remove the Program from your home or portable computer.

5. Termination. This License Agreement is effective until terminated. You may terminate the License Agreement at any time by destroying the Program. Sierra may, at its discretion, terminate this License Agreement in the event that you fail to comply with the terms and conditions contained herein. In such event, you must immediately destroy the Program.

6. Export Controls. The Program may not be re-exported, downloaded or otherwise exported into (or to a national or resident of) any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By installing the Program, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list.

7. Limited Warranty. Sierra expressly disclaims any warranty for the Program, Editor and Manual(s). The Program, Editor and Manual(s) are provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, or noninfringement. The entire risk arising out of use or performance of the Program and Manual(s) remains with the User, however Sierra warrants up to and including 90 days from the date of your purchase of the Program that the media containing the Program shall be free from defects in material and workmanship. In the event that the media proves to be defective during that time period, and upon presentation to Sierra of proof of purchase of the defective Program, Sierra will at its option 1) correct any defect, 2) provide you with a product of equal or lesser value, or 3) refund your money. Some states do not allow the exclusion or limitation of implied warranties or liability for incidental damages, so the above limitations may not apply to you.

8. Limitation of Liability. NEITHER SIERRA, VIVENDI UNIVERSAL INTERACTIVE PUBLISHING NORTH AMERICA, INC., ITS PARENT, SUBSIDIARIES OR AFFILIATES SHALL BE LIABLE IN ANY WAY FOR LOSS OR DAMAGE OF ANY KIND RESULTING FROM THE USE OF THE PROGRAM OR USE OF SIERRA ENTERTAINMENT, INC.'S ONLINE GAME NETWORK, SIERRA.COM INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312(3) OF THE UNIFORM COMMERCIAL CODE AND/OR IN ANY OTHER COMPARABLE STATE STATUTE IS EXPRESSLY DISCLAIMED. FURTHER, SIERRA ENTERTAINMENT, INC. SHALL NOT BE LIABLE IN ANY WAY FOR THE LOSS OR DAMAGE TO PLAYER CHARACTERS, ACCOUNTS, STATISTICS OR USER PROFILE INFORMATION STORED ON SIERRA.COM. I UNDERSTAND AND ACKNOWLEDGE THAT SIERRA ENTERTAINMENT, INC. CANNOT AND WILL NOT BE RESPONSIBLE FOR ANY INTERRUPTIONS OF SERVICE ON SIERRA.COM INCLUDING, BUT NOT LIMITED TO ISP DISRUPTIONS, SOFTWARE OR HARDWARE FAILURES OR ANY OTHER EVENT WHICH MAY RESULT IN A LOSS OF DATA OR DISRUPTION OF SERVICE. Some states do not allow the exclusion or limitation of incidental or consequential damages, or allow limitations on how long an implied warranty lasts, so the above limitations may not apply.

EULA.txt

9. Equitable Remedies. You hereby agree that Sierra would be irreparably damaged if the terms of this License Agreement were not specifically enforced, and therefore you agree that Sierra shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this License Agreement, in addition to such other remedies as Sierra may otherwise have available to it under applicable laws. In the event any litigation is brought by either party in connection with this License Agreement, the prevailing party in such litigation shall be entitled to recover from the other party all the costs, attorneys' fees and other expenses incurred by such prevailing party in the litigation.

10. Limitations on License. Nothing in this License Agreement shall preclude you from making or authorizing the making of another copy or adaptation of the Program provided, however, that (1) such new copy or adaptation is created as an essential step in your utilization of the Program in accordance with the terms of this License Agreement and for NO OTHER PURPOSE; or (2) such new copy or adaptation is for archival purposes ONLY and all archival copies are destroyed in the event of your Transfer of the Program, the Termination of this Agreement or other circumstances under which your continued use of the Program ceases to be rightful.

11. Miscellaneous. This License Agreement shall be deemed to have been made and executed in the State of California and any dispute arising hereunder shall be resolved in accordance with the law of California. You agree that any claim asserted in any legal proceeding by one of the parties against the other shall be commenced and maintained in any state or federal court located in the State of California, County of Los Angeles, having subject matter jurisdiction with respect to the dispute between the parties. This License Agreement may be amended, altered or modified only by an instrument in writing, specifying such amendment, alteration or modification, executed by both parties. In the event that any provision of this License Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this License Agreement shall remain in full force and effect. This License Agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements.

I hereby acknowledge that I have read and understand the foregoing License Agreement and agree that the action of installing the Program is an acknowledgment of my agreement to be bound by the terms and conditions of the License Agreement contained herein. I also acknowledge and agree that this License Agreement is the complete and exclusive statement of the agreement between Sierra and I and that the License Agreement supersedes any prior or contemporaneous agreement, either oral or written, and any other communications between Sierra and myself.

# EXHIBIT B



**CONFIDENTIAL DISCLOSURE AGREEMENT** (the "Agreement"), dated as of August 19th, 2004, by between **FIRST LLC**, 175 Middlesex Turnpike, Bedford, MA, 01730 USA ("FIRST"), and **Tim Robinson**, having its principal place of business at **2104 Poppy Ln, Richardson, TX** ("Receiving Party")

WITNESSETH

**WHEREAS**, Company possesses certain valuable and confidential information relating to its tentatively titled product, "FIRST-Racing.net", (the "Product"); including but not limited to specifications and product features of said Product (the "Information"); and

**WHEREAS**, Company is willing to provide the Receiving Party, on a confidential basis, with some of its Information, so as to allow Company and the Receiving Party to enter into beta testing the Product; and

**WHEREAS**, the Receiving Party is willing to accept Company's disclosure of Information on a confidential basis, as provided for hereunder.

**NOW, THEREFORE**, in view of the foregoing premises which are hereby incorporated as a part of the Agreement, and in consideration of the mutual promises contained herein, Company and the Receiving Party hereby agree as follows:

1. Company shall disclose either orally or in written form primarily on its beta website such of the Information as it deems necessary to facilitate its beta testing with the Receiving Party as stated above, and the Receiving Party shall accept and hold such Information in confidence in accordance with the provisions of Paragraph 2 hereof. Upon the request at any time by Company, the Receiving Party shall promptly return to Company all Information disclosed in written or tangible form, together with all copies thereof.

2. Without prior written consent of Company, the Receiving Party shall neither disclose to any third party any or all of the Information disclosed by Company hereunder, including the existence of the Product, or permit any such third party to have access to such Information, nor use such Information for any purpose other than stated above and shall limit internal dissemination of the Information within its own organization to individuals whose duties justify the need to know such Information, and then only if there is a clear understanding with such individuals of their obligation to maintain the confidentiality of such Information and to restrict the use of such Information to the purpose herein specified. Such obligations of confidentiality shall continue until such a time as the Information becomes public knowledge without fault on the part of the Receiving Party. In addition, The Receiving Party acknowledges by signing this document that they are not under the employ, or beta testing, for any third party developing or producing Racing or Driving games or simulations.

3. The parties hereto understand that each may now market or have under development products which are competitive with products or services now offered or which may be offered by the other. Subject to the terms and conditions of this Agreement, discussions and/or communications between the parties hereto will not serve to impair the right of either party to develop, make, use, procure, and/or market products or services now or in the future which may be competitive with those offered by the other, nor require either party to disclose any planning or other information to the other.

4. For the purpose of keeping the Information confidential, the Receiving Party shall use efforts fully commensurate with those which the Receiving Party employs for the protection of corresponding information of Receiving Party; but the use of such efforts shall not constitute a defense in the event that any of the Information is not kept confidential in accordance with the terms of this Agreement.

5. The Receiving Party represents and warrants to Company that it is not a party to any other agreement or under any obligation to any third party which would prevent it from entering into this Agreement or which would adversely affect this Agreement, or the Receiving Party's compliance with any of the undertakings set forth herein and also represents and warrants that the Receiving Party has no relationship other than that of being a customer with any game company or concern.

6. This disclosure of Information by Company to the Receiving Party shall not result in any obligation on the part of either party to enter into any future agreement or to undertake any other obligation not set forth in a written agreement signed by the parties hereto.

7. The Receiving Party shall be held expressly liable for any damages sustained by the Company due a breach of this agreement by the Receiving Party. The Receiving Party may also be held liable for damages sustained by the Company due to a release of or dissemination of confidential information, proprietary information, intellectual property or software. The Receiving Party hereby acknowledges that such information, software and intellectual property in development is the result of great expense by the Company and acknowledges that future income of the Company could be adversely impacted by the release or dissemination of proprietary intellectual property.

8. This Agreement contains the entire understanding between parties with respect to the matters contemplated herein and supersedes all previous written and oral negotiations, commitments, and understandings. This Agreement cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto and making specific reference to this Agreement.

**IN WITNESS WHEREOF**, Company and the Receiving Party have caused this Agreement to be executed, as of the date first above written.

Company:  
FIRST LLC

By: 

Print Name: Steve Myers

Title: Vice President of Operations

Date: 12/14/04

Receiving Party:

By: 

Print Name: TIMOTHY O. ROBINSON

Title: OWNER, OW-RACING.COM

Date: 12/23/04

# EXHIBIT C

**Tim Robinson**

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**From:** Tim Robinson [swdiecast@ow-racing.com]  
**Sent:** Sunday, March 06, 2005 4:28 PM  
**To:** maxtone@torn8oalley.net  
**Cc:** swdiecast@ow-racing.com; swdiecast@torn8oalley.net  
**Subject:** FW: Potential Copyright Issues with OWR05

**From:** Tim Robinson [mailto:swdiecast@ow-racing.com]  
**Sent:** Friday, March 04, 2005 6:03 PM  
**To:** 'Steve.Myers@First-Racing.net'  
**Subject:** Potential Copyright Issues with OWR05

Steve,

On behalf of the entire team at OW-Racing.com I am sending this email to you.

I have sent several other emails recently and all have gone unanswered. I suspect people are lurking in the background just waiting to drop a hammer on us, but would hope that is not the case.

With all the controversy in the Sim Racing community, I feel it is only appropriate that I make one last attempt to solicit a response from FIRST-RACING.

As you may or may not know, we at OW-Racing developed a mod to NR2003 which was released during the summer last year as a beta product. We are now at a stage in the development where we plan to release it as a final version.

It does and will use highly modified NR2003 physics, which FIRST claims is a violation of their intellectual property among other things.

Frankly, we disagree with that stance, as the company that originally created the code no longer exists, and since the EULA associated with that software doesn't mention FIRST-RACING, I truly doubt we are violating anything.

You bought the rights to the code and objects, not the entire product. The copyright you purchased enables you to modify the physics which then protects your version of your own executable when it is completed, which I have no problem supporting.

Papyrus/Vivendi/Sierra opened the door to modders when they released "the patch" and now FIRST is trying to squash something they legally have no control over.

Regardless, I am not here to debate the merits of the argument which you have presented in your "Open Letter", I am simply here to engage FIRST-RACING in an attempt to peacefully co-exist and not have to worry about the threats which seem to be running rampant.

I have already engaged track owners to continue to use their track likeness, logos, name, etc, and all that have responded back are more than happy to allow us to continue to use that information in this mod. Most didn't even blink. A couple wanted more info, which was provided, and then approval was granted.

We don't intend to sell our product, it will be distributed freely. We see it much as we see

"no-cd patches" that currently exist, that allow people to use their games without the CD in place. Additionally, since you don't have a product, we believe we are not infringing on anything since the product we have is a Papyrus/Vivendi product, not a FIRST-RACING product.

In any event, we are willing to work with FIRST-RACING in whatever way necessary to peacefully co-exist in this sim racing world. I can think of numerous ways and opportunities where we can be complimentary to each other rather than having to be enemies. Hopefully you can appreciate and see some of the same opportunities.

I look forward to hearing from you in this matter.

Thanks for your consideration and time reading my ramblings.

Respectfully,

Tim Robinson  
Owner  
OW-Racing.com  
[www.ow-racing.com](http://www.ow-racing.com)

**Tim Robinson**

**From:** Steve Myers@First-Racing.net  
**Sent:** Monday, March 07, 2005 4:18 PM  
**To:** swdiecast@ow-racing.com  
**Cc:** mjc@mbbp.com; Brett.Roubinek@First-Racing.net  
**Subject:** Re: Potential Copyright Issues with OWR05

Tim,

I have not heard back from you regarding this issue and I have not seen you comply with our request. Please call me, I can be reached at 781-541-6360 x103. If I have left for the evening please leave me a number that I can reach you at during the day tomorrow.

-Steve

Tim,

This was sent to you today at another email address that was linked to your site. Despite what you may believe, these rights have been transferred to FIRST. We are requesting that you remove any "mods" that hack our exe from your website and stop development on any such "mods" in the works. I am not sure how you have tried to contact us, but I have never received any email or messages regarding your site.

Sincerely,

Steve Myers

**Steve Myers/FIRST-Racing**

03/04/2005 02:19 PM

To n3mcx@swbell.net

cc mjc@mbbp.com, Brett.Roubinek@First-Racing.net

Subject Notice of copyright violation

Mr. Robinson,

We are asking for your cooperation in removing any and all content that you have put up on the web that infringes on FIRST's copyrights, which include all rights to the source and object code of the NASCAR Racing 2003 Season PC game published by Vivendi Universal Games **not expressly granted to the end user in the End User License Agreement included with the retail version of said game.** The rights **not** granted include, without limitation, the rights to modify or create derivative works. It has come to our attention that you have willfully posted material which violates those rights and respectfully ask you to stop. Please remove all said content by 5:00 PM Eastern Daylight Time Monday, March 7, 2005, and reply to this email with confirmation that you have done so.

10/18/2005

FIRST's policy regarding these rights is as follows:

**We will not tolerate the violation of our intellectual property rights, including the hacking of our executables, distribution of hacked executables, creating tools intended to hack our executables or distribution of such tools. We are prepared to take whatever legal action we determine is appropriate to protect our intellectual property rights. If you are hosting any files that violate these rights, we respectfully ask that you remove them immediately and ensure that they do not get put back up. If you are aware of any such files or sites we would appreciate your cooperation in helping us stop this illegal activity.**

Thank you in advance for your cooperation,

Steve Myers

Vice President of Operations, FIRST-Racing.net

10/18/2005

**Tim Robinson**

**From:** Steve.Myers@First-Racing.net  
**Sent:** Friday, March 18, 2005 12:49 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: Potential Copyright Issues with OWR05

Tim,

I have seen that you have taken it down, thank you. I thought it would be best if you have your lawyer contact my lawyer.

Michael J. Cavaretta, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
Reservoir Place  
1601 Trapelo Road  
Waltham, MA 02451  
Phone: (781) 622-5930 ext. 263  
Fax: (781) 622-5933  
E-Mail: [mjc@mbbp.com](mailto:mjc@mbbp.com)  
Website: [www.mbbp.com](http://www.mbbp.com)

Thanks,

Steve

"Tim Robinson" <[swdiecast@ow-racing.com](mailto:swdiecast@ow-racing.com)>

To: <[Steve.Myers@First-Racing.net](mailto:Steve.Myers@First-Racing.net)>

cc

Subject: RE: Potential Copyright Issues with OWR05

03/18/2005 12:26 AM

Please respond to < <a href="mailto:swdiecast@ow-racing.com">swdiecast@ow-racing.com</a> >
---

Steve,

Hopefully you will have seen that I have temporarily removed the OWSC mod and Kiddie Mod from being downloaded at OW-Racing.com. I did that as a good faith gesture to prove to you guys that I am not a complete jerk, and until this issue is resolved.

However, on advice from my lawyer, we would like concrete proof that the assignment of rights for Nascar Racing 2003 Season have been fully transferred to FIRST-RACING net as you have said. Currently, there exists no Assignment Document or Copyright registration numbers for us to verify your claim, and without those terms and conditions, we will not proceed any further at this point.

Accordingly, please provide as quickly as possible, Certified True copies of the Assignment Documents and/or Copyright registration #'s associated with NR2003 showing the terms and conditions of the rights transfer, and

10/18/2005

that the rights have been legally transferred to you and your team.

Once we have those document copies, we will be better able to proceed.

Once again, I believe there is an amicable solution possible that we briefly discussed when we spoke last week. I am still more than open to that type of solution if you are interested. You have already proven that you are willing to let some people mod the game with your involvement, therefore the precedent has already been established.

If you need a fax number to send the above documents, please let me know, and I will gladly provide it.

tk,

Tim Robinson  
[www.ow-racing.com](http://www.ow-racing.com)

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**From:** Steve.Myers@First-Racing.net [mailto:Steve.Myers@First-Racing.net]  
**Sent:** Tuesday, March 15, 2005 9:35 AM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: Potential Copyright Issues with OWR05

Tim,

I hope you had safe trip. I think I have been pretty fair with you Tim, but time is running out. I need to know pretty quickly what your going to do regarding your mods and the mods you are hosting with hacked physics. I don't want to put a time limit on you but if I don't hear from you soon you will force me too.

Regards,

Steve

10/18/2005



**Tim Robinson**

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**From:** Brett.Roubinek@First-Racing.net  
**Sent:** Monday, April 11, 2005 10:26 AM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: art tests

Tim,  
Would you be available Tuesday at 3pm (your time)?  
Brett

-----"Tim Robinson" <swdiecast@ow-racing.com> wrote: -----

To: <Brett.Roubinek@First-Racing.net>  
From: "Tim Robinson" <swdiecast@ow-racing.com>  
Date: 04/08/2005 07:16PM  
Subject: RE: art tests

Brett,

Sorry for not replying, as I have been out of town again.

I am on vacation next week, as it is TMS Week, which means I will be camping at track most of the week.

I will be available via cell phone if you still want to talk.

tk,

Tim Robinson

[www.ow-racing.com](http://www.ow-racing.com)

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**From:** Brett.Roubinek@First-Racing.net [mailto:Brett.Roubinek@First-Racing.net]  
**Sent:** Friday, April 01, 2005 1:52 PM  
**To:** swdiecast@ow-racing.com

10/18/2005

**Subject:** Fw: art tests

Hi Tim,

Sorry for disappearing, but Osi and I welcomed our first child into the world last Friday at 1:02am. Both baby and Mom are doing well though Mom is recovering from a C-Section.

Rather than have you and your guys take the art tests that we discussed last week, I would like to get together again via phone on Tuesday afternoon of next week at 4pm. Would you be available? Let me know.

Thanks

Brett

PS. I enjoyed the April Fools history lesson.

**Brett Roubinek**  
VP, Marketing  
FIRST-Racing.net  
175 Middlesex Turnpike  
Suite 2B  
Bedford, MA 01730  
781.541.6360x106

-----Forwarded by Brett Roubinek/FIRST-Racing on 04/01/2005 02:47PM -----

To: Brett Roubinek/FIRST-Racing@FIRST-Racing  
From: Greg Hill/FIRST-Racing  
Date: 03/23/2005 04:03PM  
Subject: art tests

10/18/2005

**Tim Robinson**

**From:** Brett Roubinek@First-Racing.net  
**Sent:** Tuesday, May 24, 2005 1:56 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: art tests

Hi Tim,  
 I imagined that you were doing a bit of travelling. I also did not want to impose on your vacation at TMS...I know how enjoyable those can be. And, how infrequently they happen.

I also am sorry to hear about your divorce. I never imagined that I would go through one, but I did last year. I know how difficult it can be.

I would still like to catch up at your convenience.

I appreciate you not lumping me in with anyone. I truly do. I am an individual with a broad range of interests, desires and goals. I also have my own (perhaps different from anyone else in the world, perhaps not) code of conduct.

As for someone checking in on ow-racing.com. That is definitely me. Not trying to find anything but education. I told you before that I have a great deal of respect for the work that you and your team have done. I still do. I am spending more time just browsing the forums. Remember, I do not come from a sim racing background.

As I have said, I would like to have another phone conversation, if for no other reason than for you to know that you can always reach me. We may not find any middle ground in regards to copyright infringement, etc. That also is ok with me. Unfortunately, law is an interpretive exercise in many ways.

Let me know when you would be available to speak and where I can reach you. I am pretty much available the rest of this week other than between 2 and 4 tomorrow afternoon and noon and 2 on Friday.

Thanks Tim.  
 Best,  
 Brett

PS. We still need artists and, while you have indicated no desire to associate with certain individuals here (and by association the entire organization), I would still like to discuss some upcoming projects with you.

**Brett Roubinek**  
 VP, Marketing  
 FIRST-Racing.net  
 175 Middlesex Turnpike  
 Suite 2B  
 Bedford, MA 01730  
 781 541.6360x106  
 860 805.9968-cell

-----"Tim Robinson" <swdiecast@ow-racing.com> wrote: -----

To: <Brett.Roubinek@First-Racing.net>  
 From: "Tim Robinson" <swdiecast@ow-racing.com>  
 Date: 05/24/2005 02:32PM

10/18/2005

Subject: RE: art tests

Brett,

Seems we lost touch for a variety of reasons, probably mostly me being on the road constantly traveling, getting a divorce, and a few other things. I am assuming you have all the artists you want or need, which is fine.

None of the people on my team, including myself, really want to be associated with a group of people that are intent on hiding behind aliases, making false accusations, and outright lies to make people believe their side of a particular story.

Having said that, I don't consider you or Steve like that, as you have always been forthcoming and open with me, even if we disagree on the principle elements of the entire copyright, intellectual property issues. Some of the tactics I have seen employed by FIRST were very underhanded, and call completely into question the legitimacy and integrity of a few individuals associated with the company.

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**Sent:** Monday, April 11, 2005 10:26 AM  
**To:** swdiecast@ow-racing.com

10/18/2005

**Subject:** RE: art tests

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I am on vacation next week, as it is TMS Week, which means I will be camping at track most of the week.

I will be available via cell phone if you still want to talk.

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**Sent:** Friday, April 01, 2005 1:52 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** Fw: art tests

10/18/2005

Hi Tim,

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Rather than have you and your guys take the art tests that we discussed last week, I would like to get together again via phone on Tuesday afternoon of next week at 4pm. Would you be available? Let me know.

Thanks

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PS. I enjoyed the April Fools history lesson.

**Brett Roubinek**

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From: Greg Hill/FIRST-Racing  
Date: 03/23/2005 04:03PM  
Subject: art tests

=

10/18/2005

**Tim Robinson**

**From:** Brett.Roubinek@First-Racing.net  
**Sent:** Tuesday, May 24, 2005 3:49 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: art tests

Tim,  
Let's plan on Friday at 10:30 eastern. Where can I reach you?

Best,

Brett

**Brett Roubinek**  
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From: "Tim Robinson" <swdiecast@ow-racing.com>  
Date: 05/24/2005 04:35PM  
Subject: RE: art tests

Brett,

I am available pretty much anytime tomorrow except from 10 ? 11 CDT, out of town on Thursday, back on Friday, available anytime before 1pm CDT, and after 2pm CDT.

Look forward to hearing from you.

Tks,

---

**From:** Brett.Roubinek@First-Racing.net [mailto:Brett.Roubinek@First-Racing.net]  
**Sent:** Tuesday, May 24, 2005 1:56 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: art tests

10/18/2005



Hi Tim,

I imagined that you were doing a bit of travelling. I also did not want to impose on your vacation at TMS...I know how enjoyable those can be. And, how infrequently they happen.

I also am sorry to hear about your divorce. I never imagined that I would go through one, but I did last year. I know how difficult it can be.

I would still like to catch up at your convenience.

I appreciate you not lumping me in with anyone. I truly do. I am an individual with a broad range of interests, desires and goals. I also have my own (perhaps different from anyone else in the world, perhaps not) code of conduct.

As for someone checking in on ow-racing.com. That is definitely me. Not trying to find anything but education. I told you before that I have a great deal of respect for the work that you and your team have done. I still do. I am spending more time just browsing the forums. Remember, I do not come from a sim racing background.

As I have said, I would like to have another phone conversation, if for no other reason than for you to know that you can always reach me. We may not find any middle ground in regards to copyright infringement, etc. That also is ok with me. Unfortunately, law is an interpretive exercise in many ways.

Let me know when you would be available to speak and where I can reach you. I am pretty much available the rest of this week other than between 2 and 4 tomorrow afternoon and noon and 2 on Friday.

Thanks Tim.

Best,

Brett

PS. We still need artists and, while you have indicated no desire to associate with certain individuals here (and by association the entire organization), I would still like to discuss some

10/18/2005

upcoming projects with you.

**Brett Roubinek**

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10/18/2005

**Tim Robinson**

**From:** Brett.Roubinek@First-Racing.net  
**Sent:** Thursday, June 02, 2005 12:10 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: question...

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Thanks again, Tim.  
Brett

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"Tim Robinson" <swdiecast@ow-racing.com>

To: <Brett.Roubinek@First-Racing.net>

cc

Subject: RE: question...

06/02/2005 12:56 PM

Please respond to  
<swdiecast@ow-racing.com>

He is not one of my development guys, however, he is a member of OW-Racing and Torn8oAlley.com. He is/was a beta-tester for OW-Racing, a very nice, knowledgeable sim racer that has been around awhile.

At Torn8oAlley.com, he is "Board Member" of mine responsible for ensuring and assisting with day-to-day operations.

I own both organizations, which I think you knew.

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Let me know if you need anything else.

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10/18/2005

**Tim Robinson**

**From:** Brett.Roubinek@First-Racing.net  
**Sent:** Thursday, June 09, 2005 2:25 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: question...

Tim,  
 Hey, I am (as usual) up to my eyeballs. Got your email (obviously) and can either talk or respond tomorrow sometime.  
 Thanks  
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"Tim Robinson" <swdiecast@ow-racing.com>

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Subject: RE: question...

06/09/2005 01:14 AM

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Quote:

"First, our upcoming release will not be a mod of NASCAR Racing 2003 Season and was never planned to be."

If that is truly the case, then please explain all the nonsense with people modding NR2003? If it is not planned to be used, then why on earth would anyone care what the heck happens with it? What exactly are you protecting, if you have no plans to use it? Why go through all the crap with Tim McArthur? You guys made a big production of "shutting down a mis-guided modder" and now you come out with this?? This, in short, says we weren't really protecting anything since we aren't going to use it anyway!

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Again, I struggle to understand the timing and even the meaning of putting something like this up? It makes me want to completely rethink my position about releasing a mod.

10/18/2005



Help me out here??

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Tim Robinson  
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10/18/2005

**Tim Robinson**

**From:** Brett Roubinek@First-Racing.net  
**Sent:** Friday, June 10, 2005 3:30 PM  
**To:** swdiecast@ow-racing.com  
**Subject:** RE: question...

Tim,  
Still up to my ass in alligators. And, yes, they're hungry. Call me over the weekend when you have time?  
860.805.9968.  
Best,  
Brett

"Tim Robinson" <swdiecast@ow-racing.com>

To: <Brett.Roubinek@First-Racing.net>

cc

Subject: RE: question...

06/09/2005 04:05 PM

Please respond to <swdiecast@ow-racing.com>
--

Brett,

I understand.

You should use one of my sayings, "I'm up to my ass in alligators, and they're hungry!"

No worries, whenever you have time.

Having had a little time to think about it, maybe I overreacted, but it still rubs me the wrong way.

Tks,

---

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10/18/2005

**Tim Robinson**

**From:** Brett.Roubinek@First-Racing.net  
**Sent:** Wednesday, June 22, 2005 10:10 PM  
**To:** Tim Robinson  
**Subject:** Re: Yikes!!

Hey Tim,  
We are not going after anyone. We simply responded to an email from Jan. Give me a shout tomorrow and I'll fill you in.

Saw your new contact info. Was there a promotion?

**Brett**  
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From: "Tim Robinson" <swdiecast@torn8oalley.com>  
Date: 06/22/2005 11:01PM  
Subject: Yikes!!

Brett,

It is becoming increasingly difficult for me to try and spread anything good about you guys. Everytime I have someone half believing me, something comes up and you guys step on ?it.? It?s unbelievable!

I trust you are aware of this, <http://www.tmcArthur.net/forum/viewtopic.php?t=52>

I know you?re in marketing, and I really believe you are true and genuine. You can?t possibly believe this is good for FIRST/Iracing, can you?

This latest bit of nonsense about going after The USPITS is absolutely incredulous to me.

Someone is making some very strong accusations, and some of it borders on slander. It is a stretch at best to try and somehow tie Tim McArthur and The Pits together. And just who do you consider to be a member of The Pits? Anyone who is signed up at their site?

10/18/2005

This smacks of someone now being nothing more than vindictive and harassing

I am home all day tomorrow, if you have a chance to call me, call my home # listed below.

tk,

Tim Robinson

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